



February 22, 2002

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## ENGROSSED SENATE BILL No. 243

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DIGEST OF SB 243 (Updated February 19, 2002 4:54 PM - DI 96)

**Citations Affected:** IC 8-21; IC 36-7.

**Synopsis:** Regulation of certain tall structures. Creates new permit requirements for certain tall structures near a public airport. Applies obstruction standards to both existing airports and heliports. Requires that a permit from the department of transportation must be approved for a regulated tall structure before a zoning change may be made for land that involves the structure.

**Effective:** July 1, 2002.

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### Server

(HOUSE SPONSORS — HASLER, DILLON)

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January 7, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

January 17, 2002, reported favorably — Do Pass.

January 22, 2002, read second time, ordered engrossed.

January 23, 2002, engrossed.

January 24, 2002, read third time, passed. Yeas 49, nays 0.

#### HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Roads and Transportation.

February 21, 2002, reported — Do Pass.

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ES 243—LS 6802/DI 94+



February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## ENGROSSED SENATE BILL No. 243

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A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 8-21-10-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. As used in this  
3 chapter:  
4 "Department" refers to the Indiana department of transportation.  
5 "**Noise sensitive purpose**" means the use of a building or  
6 structure as a residence, school, church, child care facility, medical  
7 facility, retirement home, or nursing home.  
8 "Permit" means a permit issued by the department under this  
9 chapter.  
10 "Person" means any individual, firm, partnership, corporation,  
11 company, limited liability company, association, joint stock  
12 association, or body politic, including any trustee, receiver, assignee,  
13 or other similar representative.  
14 "Public-use airport" means any area, site, or location, either on land,  
15 water, or upon any building, which is specifically adapted and  
16 maintained for the landing and taking off of aircraft, and utilized or to  
17 be utilized in the interest of the public for such purposes. The term

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does not include:

- (1) any private use airport or landing field; or
- (2) any military airport solely occupied by any federal branch of government using that airport for military air purposes.

"Structure" means any object constructed or installed by man including, but not limited to, cranes, buildings, towers, smokestacks, electronic transmission or receiving towers, **buildings used for a noise sensitive purpose**, and antennae and overhead transmission lines.

SECTION 2. IC 8-21-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Unless a permit has been issued by the department, a person may not erect, alter, or add to the height of any structure which falls within any one (1) of the following categories:

(1) Any construction or alteration of more than two hundred (200) feet above ground level at its site.

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one (1) of the following slopes:

(A) One hundred (100) to one (1) for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of any public-use airport with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

(B) Fifty (50) to one (1) for a horizontal distance of ten thousand (10,000) feet from the nearest point of the nearest runway of any public-use airport with its longest runway no more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

(C) Twenty-five (25) to one (1) for a horizontal distance of five thousand (5,000) feet from the nearest point of the nearest landing and takeoff area of any public-use heliport.

(3) Any construction or alteration of traverse ways used, or to be used, for the passage of mobile objects if the standards set forth under subdivisions (1) and (2) would be exceeded, but only after the heights of these traverse ways are increased by:

(A) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(B) Fifteen (15) feet for any other public roadway.

(C) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.



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(D) Twenty-three (23) feet for a railroad.

(E) For a waterway or any other traversed way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(b) Unless:

(1) a permit **for construction in a noise sensitive area** has been ~~issued~~ **approved** by the department;

(2) **the holder of a permit for construction in a noise sensitive area has filed a copy of the permit for construction in a noise sensitive area with the county recorder of the county in which the structure is located, as provided in subsection (d); and**

(3) **a certified copy of the recorded permit for construction in a noise sensitive area, with the recording data from the county recorder on the copy of the permit, has been received by the department;**

a person may not erect a ~~residential building or other building designed used~~ for a noise sensitive ~~uses~~ **purpose** within an area lying one thousand five hundred (1,500) feet on either side of the **centerline and the extended centerline** of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport.

(c) **A person applying for a permit under subsection (a) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport located within a five (5) nautical mile radius surrounding the structure, regardless of county lines, if the structure that is the subject of the permit is:**

(1) a new structure; or

(2) an existing structure to which additional height is added.

(d) **A person applying for a permit for construction in a noise sensitive area under subsection (b) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport if the public use airport is located within a distance of one (1) nautical mile from the boundary of the property that contains the building used for a noise sensitive purpose.**

(e) **Notice under subsections (c) and (d) must be sent by certified or registered mail, with return receipt requested, and must include the:**

(1) name, telephone number, and a contact person for the:

(A) applicant;

(B) department; and

(C) plan commission that has jurisdiction over the site of the structure;

(2) location of the structure, including a legal description;



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1 (3) height of the structure; and

2 (4) Federal Aviation Administration aeronautical study  
3 number assigned to the application, if applicable to the type  
4 of permit for which notice is required.

5 (f) The applicant for a permit under subsection (b) shall record  
6 each permit issued by the department in the office of the county  
7 recorder for the county where the structure is located, not later  
8 than five (5) business days after the department issues the permit.  
9 If a structure is located in more than one (1) county, the county  
10 that contains the majority of the structure is the county in which  
11 the permit must be filed.

12 (g) A permit issued under subsection (b) is valid only after the  
13 department receives a certified copy of the recorded permit with  
14 the recording data from the county recorder of the county in which  
15 the structure is located.

16 (h) A permit issued under subsection (b) must contain the  
17 following statement:

18 "The permittee acknowledges for itself, its heirs, its  
19 successors, and its assigns, that the real estate described in  
20 this permit experiences or may experience significant levels of  
21 aircraft operations, and that the permittee is erecting a  
22 building designed for noise sensitive use upon the real estate,  
23 with the full knowledge and acceptance of the aircraft  
24 operations as well as any effects resulting from the aircraft  
25 operations."

26 (i) An applicant for a permit under subsection (a) must provide  
27 written evidence to the department that the structure being  
28 constructed does not violate section 7 of this chapter with regard  
29 to an existing public use airport, if a public use airport is located  
30 within a five (5) nautical mile radius surrounding the structure  
31 that is the subject of the permit.

32 (j) Unless a denial of permit is issued by the department, a  
33 Determination of No Hazard to Air Navigation from the Federal  
34 Aviation Administration is a permit under this section, and a  
35 separate permit will not be issued by the department.

36 SECTION 3. IC 8-21-10-6 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) Upon receiving  
38 an application for a permit, the department shall make such  
39 investigation as may be necessary to properly process the application  
40 under this chapter. The investigation shall be conducted so as to  
41 determine, in the opinion of the department, if the proposed structure  
42 erected in the proposed location would have a substantial adverse

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effect upon the safe and efficient use of the navigable airspace and would be a hazard to air navigation if constructed. The department may take into consideration findings and recommendations of other governmental agencies or interested persons concerning the proposed structure; however, such findings or recommendations are not binding on the department. Further, the requirements of this chapter do not supersede any other law.

**(b) The department must consider an application for a permit for a period of sixty (60) days before making a final determination on the permit if:**

**(1) a public use airport is located within a five (5) nautical mile radius surrounding the structure, regardless of county lines; and**

**(2) the structure that is the subject of the permit is:**

**(1) a new structure; or**

**(2) an existing structure to which additional height is added.**

SECTION 4. IC 8-21-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) **This section applies to:**

**(1) an existing public use airport; and**

**(2) a public use heliport.**

**(b)** If any of the obstruction standards set forth in this subsection are exceeded, the proposed structure is presumed to have a substantial adverse effect upon the safe and efficient use of the navigable airspace and would be a hazard to air navigation if constructed. Except as provided in section 9 of this chapter, the department shall not issue a permit for any proposed structure that would exceed any of the following obstruction standards:

**(1)** A height that is five hundred (500) feet above ground level at the site of the object anywhere in the state.

**(2)** A height that is two hundred (200) feet above ground level or above the established airport elevation, whichever is higher, within three (3) nautical miles of the established reference point of a public-use airport, excluding heliports, and that height increases in the proportion of one hundred (100) feet for each additional nautical mile of distance from the airport up to a maximum of five hundred (500) feet.

**(3)** A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, as defined by federal law and regulations, which would result in the vertical distance between any point on the

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object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(4) A height within an enroute obstacle clearance area, as defined by federal law and regulations, including turn and termination areas of a federal airway or approved off-airway route that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of a public-use airport or heliport or any imaginary surface as established under section 8 of this chapter. However, no part of the takeoff or landing area itself will be considered to be an obstruction.

~~(b)~~ (c) Except for traverse ways on or near an airport with an operative ground traffic control service, furnished by an air traffic control tower or by the airport management and coordinated with the air traffic control service, the standards set forth above in subsection ~~(a)~~ (b) apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by the following:

(1) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(2) Fifteen (15) feet for any other public roadway.

(3) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(4) Twenty-three (23) feet for a railroad.

(5) For a waterway or any other traverse way not covered by subdivisions (1) through (4), an amount equal to the height of the highest mobile object that would normally traverse it.

SECTION 5. IC 36-7-4-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 604. (a) Before the plan commission certifies a proposal to the legislative body under section 605 of this chapter, the plan commission must hold a public hearing under this section.

(b) The plan commission shall give notice of the hearing by publication under IC 5-3-1. The notice must state:

(1) the time and place of the hearing;

(2) either:

(A) in the case of a proposal under section 606 or 607 of this chapter, the geographic areas (or zoning districts in a specified geographic area) to which the proposal applies; or

(B) in the case of a proposal under section 608 of this chapter,



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the geographic area that is the subject of the zone map change;  
(Subdivision (2) does not require the identification of any real property by metes and bounds.)

(3) either:

(A) in the case of a proposal under section 606 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text of the ordinance);

(B) in the case of a proposal under section 607 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text) that describes any new or changed provisions; or

(C) in the case of a proposal under section 608 of this chapter, a description of the proposed change in the zone maps;

(4) if the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;

(5) the place where a copy of the proposal is on file for examination before the hearing;

(6) that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered;

(7) that oral comments concerning the proposal will be heard; and

(8) that the hearing may be continued from time to time as may be found necessary.

(c) The plan commission shall also provide for due notice to interested parties at least ten (10) days before the date set for the hearing. The commission shall by rule determine who are interested parties, how notice is to be given to interested parties, and who is required to give that notice. However, if the subject matter of the proposal abuts or includes a county line (or a county line street or road or county line body of water), then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice under this subsection.

(d) The hearing must be held by the plan commission at the place stated in the notice. The commission may also give notice and hold hearings at other places within the county where the distribution of population or diversity of interests of the people indicate that the hearings would be desirable. The commission shall adopt rules governing the conduct of hearings under this section.

(e) A zoning ordinance may not be held invalid on the ground that

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the plan commission failed to comply with the requirements of this section, if the notice and hearing substantially complied with this section.

(f) The files of the plan commission concerning proposals are public records and shall be kept available at the commission's office for inspection by any interested person.

(g) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter or in the case of a proposed approval of a development plan required by a zoning ordinance as a condition of development, a person may not communicate before the hearing with any hearing officer, member of the historic preservation commission, or member of the plan commission with intent to influence the officer's or member's action on the proposal. Before the hearing, the staff may submit a statement of fact concerning the physical characteristics of the area involved in the proposal, along with a recital of surrounding land use and public facilities available to serve the area. The staff may include with the statement an opinion of the proposal. The statement must be made a part of the file concerning the proposal not less than six (6) days before the proposal is scheduled to be heard. The staff shall furnish copies of the statement to persons in accordance with rules adopted by the commission.

(h) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter, this subsection applies if the proposal affects only real property within the corporate boundaries of an excluded city. Notwithstanding the other provisions of this section, the legislative body of the excluded city may decide that the legislative body rather than the plan commission should hold the public hearing prescribed by this section. Whenever the plan commission receives a proposal subject to this section, the plan commission shall refer the proposal to the legislative body of the excluded city. At the legislative body's first regular meeting after receiving a referred proposal, the legislative body shall decide whether the legislative body will hold the public hearing. Within thirty (30) days after making the decision to hold the hearing, the legislative body shall hold the hearing, acting for purposes of this section as if the legislative body is the plan commission. The legislative body shall then make a recommendation on the proposal to the plan commission. After receiving the excluded city legislative body's recommendation (or at the end of the thirty (30) day period for the public hearing if the proposal receives no recommendation), the plan commission shall meet and decide whether to make a favorable recommendation on the proposal. If the proposal receives a favorable recommendation from the commission, the

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proposal shall be certified to the county legislative body as provided in section 605 of this chapter.

**(i) Before a proposal involving a structure regulated under IC 8-21-10 may become effective, the plan commission must have received:**

**(1) a copy of:**

**(A) the permit for the structure issued by the Indiana department of transportation; or**

**(B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and**

**(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.**

SECTION 6. IC 36-7-4-918.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 918.5. **(a)** A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A variance may be approved under this section only upon a determination in writing that:

**(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

**(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and**

**(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.**

**(b) Before approval of a proposal involving a structure regulated under IC 8-21-10 may become effective, the board of zoning appeals must have received:**

**(1) a copy of:**

**(A) the permit for the structure issued by the Indiana department of transportation; or**

**(B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and**

**(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 243, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 243 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 243, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

COOK, Chair

Committee Vote: yeas 11, nays 0.

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